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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOUNG JAE JEON

Appeal 2009-006979
Application 10/777,655
Technology Center 2400

Oral Hearing Held: December 3, 2009

Before KENNETH W. HAIRSTON, JOHN C. MARTIN, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges.*

ON BEHALF OF THE APPELLANT:

ROBERT J. WEBSTER, ESQUIRE
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The above-entitled matter came on for hearing on Thursday, December 3, 2009, commencing at 9:21 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Dawn A. Brown, Notary Public.

1 THE USHER: Calendar Number 6, Appeal Number 2009-6979.

2 Mr. Webster.

3 JUDGE HAIRSTON: Thank you. How you doing?

4 MR. WEBSTER: Good morning, gentlemen.

5 JUDGE HAIRSTON: Good morning.

6 MR. WEBSTER: How are you?

7 JUDGE HAIRSTON: Good thanks. And you?

8 MR. WEBSTER: Good. I would like to start out by running through

9 Claim 1 so that we can just get things in focus. We have a home network
10 system, at least one slave device, TV receiver connected to the slave device.

11 The TV has got a microprocessor. It repeatedly sends a status request signal to
12 the slave device and receives one or more response signals from the slave
13 device.

14 And it has a memory. There is a memory coupled to the microprocessor
15 for constructing an operation history database by cumulatively storing
16 operation status data of the slave device included in each response signal
17 wherein the microprocessor extracts data from the operation history database
18 when a history inquiry request is received from a user, a display unit coupled
19 to the microprocessor to display the extracted operation history data.

20 And this is important when we get down to this wherein clause, wherein
21 the operation status data includes data related to specific functions performed
22 by the slave device.

23 The television receiver includes a capability to activate a message
24 BLOCK function, which prevents messages sent from the slave device from
25 being displayed. And the memory cumulatively stores the operation status

1 data that is included in each response signal even when the message BLOCK
2 function of the television receiver is currently activated.

3 The final rejection of this claim and the similar claims, the independent
4 claims -- there is another apparatus claim with a TV receiver and there is also a
5 method claim -- is based on three references.

6 Smyers, which is actually in the ballpark because it does have a master
7 slave system and it does -- is directed to somebody who wants to know the
8 history of changes of certain devices over a period of time, and it has a log to
9 record those things.

10 And the Examiner admits that Smyers fails to disclose three separate
11 things: the feature of a home network system where the master device is a TV
12 receiver; two, where the master device includes a capability to activate the
13 message BLOCK function that prevents messages sent from the at least one
14 slave device from being displayed; and also, three, wherein the memory
15 cumulatively stores the operation status data included in each response signal
16 regardless of whether a message BLOCK function of the master device is
17 activated or not.

18 The Office Action turns to two other references to try and show that it
19 would be obvious to come up with these features. The first is Sitnik. Sitnik
20 does not have a master-slave relationship. It is a peer-to-peer device between
21 different TV's. The Examiner says it is in an endeavor but never explains
22 what the relationship is. And the Office Action needs to turn to a third
23 reference to come up with some sort of video blocking.

24 JUDGE MARTIN: Before we get to that third reference, Sitnik is relied
25 on just for the teaching of having a master controller take the form of a
26 television; is that right?

1 MR. WEBSTER: And I have no problem with the master controller
2 being a form of a television.

3 JUDGE MARTIN: Okay.

4 MR. WEBSTER: There is no problem with that.

5 JUDGE MARTIN: On to Klosterman.

6 MR. WEBSTER: And then the Examiner turns to Klosterman and he
7 says that Klosterman allows television programming signals to be received or
8 stored in the receiver device while the display of the signal is blocked from
9 view or replaced with alternative graphics or text. And, of course, our position
10 has been throughout the prosecution and in the Brief that that is not the
11 claimed invention. And I'll get into that further as we go on.

12 Now, the main point that we have made throughout prosecution history
13 and during the interview and also here in the Brief is that even if you combine
14 all of these three references, they're still missing claimed features.

15 Not one of these references discloses a TV receiver that includes the
16 capability to activate a message BLOCK function that prevents messages sent
17 from at least one slave device from being displayed.

18 And it doesn't have a memory that cumulatively stores the operation
19 status of at least one slave device included in each slave response signal even
20 when the message BLOCK function of the TV receiver is currently activated
21 as recited in all the claims.

22 We have alleged all along that the driving motivation for making this
23 rejection was the blueprint that is set forth in the claimed device in the Jeon
24 application. And we also have argued consistently that the references actually
25 teach away from being combined as they are combined in the reference.

1 As we've said before, Smyers, the base reference, is missing those three
2 admitted features. We'll go along with the television. But whether it is a
3 television receiver, we're not really going to argue that when he combines it
4 with Sitnik.

5 But Smyers and Sitnik still miss those other two features wherein the
6 master device includes the capability to activate a message BLOCK function
7 that prevents messages sent from the slave device from being displayed, and
8 wherein the memory cumulatively stores the operation status included in each
9 response signal regardless of whether the message BLOCK function is
10 activated or not.

11 Now, Klosterman, which is the third reference, really has nothing to do
12 with master-slave status query operations on a home network. That is really an
13 interactive TV system. It is nothing more than that. Nothing more, nothing
14 less.

15 And in Klosterman, the blocked TV signals aren't stored at all.
16 Basically, what Klosterman wants to do is when some person is -- has a digital
17 TV with an electronic programming guide. And they're watching a TV
18 program and a commercial comes on.

19 They want to be able to have a signal come down from the head end,
20 from the TV station, to come down and say, look, here are when the
21 commercials are coming on, so we're going to let you block those
22 commercials and you can send other commercials or anything else you want.

23 But while those commercials are being blocked, they're not being
24 stored. That is just television programming that is going into the air
25 somewhere. And you can go ahead and while those are blocked, you can come

1 in with these other ads or whatever else you want and take a look at these other
2 ads. That is basically what Klosterman is.

3 So our position all along has been one of ordinary skill in the art would
4 not be properly motivated to turn to Klosterman to modify Smyers, or Smyers
5 in view of Sitnik, because there is no reason for doing it. There is no -- there is
6 just no logical motivation for doing that.

7 In other words, the Office Action provides no reasonable nexus between
8 these significant modes of operations of Smyers and Sitnik and Klosterman.

9 In the one argument we have on Page 23 of the breach -- of the Brief,
10 we say the statement that one would be motivated to block Smyers'
11 operational history displays, which a user wants to display in Smyers, is
12 counterproductive and would effectively frustrate a user of Smyers' system by
13 blocking the very operational history reports that a user has asked for.

14 And so we think that this is an example of where the proposed
15 modification of Klosterman -- of Smyers by Klosterman would be -- result in
16 an inoperative device in a sense that Smyers would be precluded from
17 operating as intended. They are just totally different purposes in these
18 references.

19 With respect to the other dependent claims, basically, we have presented
20 the other arguments -- the Dara-Abrams secondary, another secondary
21 reference is just an internet diagnostic system, and that is applied with respect
22 to getting an ID of the device. I think IDs of devices might -- you know, it is
23 nice in the art to know the ID of device. You probably have to have that to
24 work anyways.

1 And the Aizu reference shows a power-line communication, and so we
2 didn't argue the fact -- I mean power-line communications are a well-known
3 type of networking device. And --

4 JUDGE MARTIN: Mr. Webster, can I interrupt you? Well, go ahead
5 and finish that thought and then I'll follow up.

6 MR. WEBSTER: I mean, so basically what we're focusing on is the
7 three-reference combination -- Smyers, Sitnik and Klosterman.

8 JUDGE MARTIN: I just have a question that is not directly related to
9 the rejection. I had a question about the background of the invention described
10 in the application. You talk about the BLOCK function.

11 MR. WEBSTER: Yeah.

12 JUDGE MARTIN: I know this isn't relied on by the Examiner, but I
13 just wanted to ask you. We have the BLOCK function there and that prevents
14 the responses from being displayed at the TV set, which can be used as the
15 main controller, the master device.

16 So the difference between the admitted prior art and the claimed
17 invention is just storing the received signals, right, even though they're not
18 displayed?

19 MR. WEBSTER: What it says is, one of the known functions for
20 eliminating an overload problem. So it is a BLOCK function which may be
21 activated in the master device for not displaying the message signals sent by
22 the slave device for a predefined period of time.

23 I don't know what -- any more details than what are there. I don't want
24 to make an admission against interest, and I honestly don't know -- and the
25 other thing that I would point out is that Section Heading II says "Discussion
26 of Related Art." And so whether it does or it doesn't, there is no clear,

1 unequivocal or an mistakable admission that what is discussed there is prior art
2 to the Applicant.

3 JUDGE MARTIN: Thank you.

4 JUDGE HAIRSTON: Thank you, Counselor.

5 MR. WEBSTER: Thank you, gentlemen.

6 (Whereupon, the proceedings at 9:34 a.m. were concluded.)